1979

Allstate Insurance Company, A Corporation v. Richard Bruce Anderson : Brief of Plaintiff-Appellant, Allstate Insurance Company, A Corporation

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

ALLSTATE INSURANCE COMPANY, a Corporation,

Plaintiff and Appellant

-vs-

RICHARD BRUCE ANDERSON,

Defendant and Respondent

Case No. 16411

BRIEF OF PLAINTIFF--APPELLANT, ALLSTATE INSURANCE COMPANY, A CORPORATION

Appeal From A Judgment Of The First Judicial District Court
In and For Cache County, Utah
Honorable Tad S. Perry, Circuit Judge, Presiding
Pro Tem

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OTHER AUTHORITY

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BRIEF OF PLAINTIFF-APPELLANT, ALLSTATE INSURANCE COMPANY, A CORPORATION

NATURE OF THE CASE

This is an action to recover $2,000.00 paid by Allstate to Defendant as no-fault benefits, following a settlement by Defendant with the tort feasor's insurance carrier.

DISPOSITION IN LOWER COURT

After a trial, without a jury, judgment was rendered in favor of Defendant and against Plaintiff.

RELIEF SOUGHT ON APPEAL

Plaintiff-Appellant seeks a reversal of the Lower Court's decision with instructions to enter judgment in favor of Plaintiff-Appellant and against the Defendant-Respondent.

STATEMENT OF FACTS

On January 1, 1976, Defendant, while riding as a passenger

in a vehicle, insured by Plaintiff, Allstate, was injured in a automobile accident. He made claim for no-fault benefits and was paid $2,000.00, the limits of medical coverage under said statute.

The Defendant Anderson retained Daines and Daines, Att and suit was filed against the tort feasor, a Sandra Lee Coll who was insured by State Farm Mutual Insurance Company, whose Attorney in the defense of said tort action was Wendell E. Be Esq.

On December 17, 1976, Attorney Daines was notified by state that he was not to represent their interests as they wo abide by the provisions of the No-Fault Statute and would pur their own recovery, and requesting that in the event suit wer filed, that Allstate be notified, so that they could retain t own attorney to protect their interest. (Defendant's Exhibi

The tort action was filed on September 6, 1977.

Allstate had notified State Farm by carbon copy of th foregoing letter (Exhibit 2), as well as letters to Attorney Da dated December 17, 1976, as well as other correspondence, and Allstate's subrogation interests were acknowledged by a repl State Farm advising that they were negotiating with Anderson' counsel.

The tort litigation was settled for a total of $10,00 and two settlement drafts were issued, one for $8,000.00 to An son and his Attorney, and the other for $2,000.00 payable to

Richard Bruce Anderson and Allstate Insurance Company. Prior to the issuance of the draft, Anderson had executed a full and final Release, with no reservations therein. (Exhibit 3)

Anderson and his Attorney refused to deliver the draft to Allstate and this suit was filed.

ARGUMENT

POINT ONE

THE JUDGMENT BELOW SHOULD BE REVERSED AS THE DEFENDANT ERRONEOUSLY IS PERMITTED DOUBLE RECOVERY.

The very recent case of Elmer E. Jones -vs- Transamerica Insurance Company, March 12, 1979, Green Sheets, Case No. 15809, in facts almost squarely in line with the facts of this case, this Honorable Court states:

> "The whole tenor of the (No-Fault) Act is that an injured person will not be permitted to recover from an insurance carrier (over and above what the carrier has previously paid in benefits) once he has successfully recovered from his tortfeasor for personal injuries. Any other interpretation would be to permit double damage recovery."
>
> ... ...
>
> "No-fault benefits are also available to those who sustain greater injuries. This is so even though they remain free to pursue a tort claim as well. However, this does not entitle one to a double recovery for a single loss since the statute specifically affords subrogation rights and arbitration between insurers whenever no-fault benefits are paid."
>
> ... ...
>
> "Double recovery for a single item of loss was never contemplated by the legislature and we will not permit any type of automatic reward or "windfall" to an injured Plaintiff."

Defendant-Respondent claimed at the trial of this ca and will claim, that the settlement arranged with State Farm Insurance was solely for the Defendant-Respondent's injuries and that it did not include any interest of Allstate.

Such a claim, however, ignores the plain facts.

State Farm's Attorney, Wendell Bennett, by letter of June 30, 1978 (attached to Exhibit 3) states in part:

"Dear Dave:

> After reading your letter of June 23, 1978, it would appear to me that we must have been dealing under a different assumed set of facts, and therefore did not come to a meeting of the minds when we were settling this case. My offer of settlement was to settle any and all claims, which would include any possible subrogation rights of Allstate. I felt when I made the offer, as I do now, that the $10,000.00 was a somewhat liberal offer in settlement of everybody's claim involved in this case, including Allstate's, and at no time did I ever intend to offer Mr. Anderson $10,000.00, and then have to deal separately with Allstate on any portion of the claim that th had..."

The general Release, also attached to Exhibit 3, rele not only the tortfeasor and her parents, but includes State Farm Mutual Automobile Insurance Company. The Release contai reservations as to any claims being left open.

The Release was forwarded by Mr. Anderson's Attorney Wendell Bennett, by letter of August 9, 1978, stating as fol

"Dear Mr. Bennett:

> Enclosed is an executed and signed standard Release form from Richard B. Anderson. We hereby request th you forward to us one of the following:
>
> 1. A check payable to our firm and Richard B. Anderson only for $10,000.00; or

2. A check payable to us as Attorneys for Richard B. Anderson only in the amount of $8,000.00, and a check for $2,000.00 payable to us, Richard B. Anderson and Allstate Insurance Company.

Sincerely,

DAINES & DAINES

/s/
N. GEORGE DAINES
Attorney at Law

cc: Richard Anderson
Allstate Insurance"

Accordingly, two checks were forwarded to Mr. Daines by State Farm, through their Attorney Wendell Bennett, one of which was in the amount of $2,000.00 payable to Richard Bruce Anderson and Allstate Insurance Company. This check was offered in evidence as Defendant's Exhibit 1.

As stated by this Honorable Court in Jones -vs- Transamerica, supra:

> "...defendant insurer is subrogated to the rights of plaintiff in asserting a claim against the tortfeasors' insurers in recovering benefits based upon liability. The rights to which the subrogee succeeds can be no greater than those of the person for whom he is substituted. By executing the release, plaintiff discharged the tortfeasors of any and all liability, notwithstanding the attempted "specific exclusion" relating to no-fault benefits. By so doing, plaintiff has chosen his recovery and cannot now successfully assert a claim against his insurer."

As indicated previously, not only did the Release, signed by Mr. Anderson, on advice of his counsel, release the tortfeasors, but released State Farm Mutual Insurance Company, the tortfeasors' insurer. This was done after he, and his counsel, had actual notice on many occasions of Allstate's subrogation interest, and in fact, the settlement was arranged by defendant and his attorney,

obviously in a unilateral effort to thwart Allstate's rights.

The Memorandum Decision of the Honorable Trial Court (R-41) commences with a sound premise ("The party with the greater equity should prevail"), but then falls into utter fallacious reasoning.

> "Here the plaintiff advised the defendant that defendant's attorney was not retained to represent plaintiff in an action against the tortfeasor, that plaintiff would pursue its own remedy against tortfeasors' insurer, that such remedy would be decided by arbitration, that plaintiff intended to pursue its own recovery, and defendant's action against the tortfeasor was not, accordingly, made in behalf of the plaintiff as well as defendant."

The Trial Court completely overlooks the fact that the plaintiff did, in fact, pursue its own remedy by making demand upon State Farm and notifying Attorney Daines. The Court seems to assume that once plaintiff announced that it would seek arbitration, if necessary, that the plaintiff is thereby limited in arranging settlement. The Trial Court also completely ignores the correspondence between Attorneys Daines and Bennett, quoted supra, and the further fact that two drafts were actually issued, one with Allstate's name on it. Arbitration, therefore, was not necessary, as the insurance companies had settled.

The Trial Court also ignores the fact that a cause of action may not be split. Raymer -vs- Hi-Line Transport Inc., 15 Ut.2d 394 P.2d 383.

The Trial Court ignored the pronouncements of this Honorable Court that the execution of a general Release, releases all persons and particularly in the case at bar, the Release included the agents of State Farm Mutual Insurance Company.

In Anderson -vs- Oregon Short Line Ry. Company, 47 Ut.614, 155 P.446, a 1916 case which is still the law of this State, the Court states:

> "...where a party, who has a claim against another, agrees upon a settlement of his claim, and accepts a sum of money, or other thing of value in settlement of such claim, he is, in the absence of fraud, or concealment, concluded in the settlement."

The defendant, by signing the Release, has placed Allstate in a position where it could take no action, even by arbitration. As stated by this Court in Jones -vs- Transamerica, supra:

> "The rights to which the subrogee succeeds can be no greater than those of the person for whom he is substituted." (Quoting 73 Am Jur. 2d, Subrogation Sec. 106.)

The Lower Court also ignores the language of Lyon -vs- Hartford, 25 Ut.2d 314, 480 P.2d 739:

> "In the absence of express terms to the contrary, the insured is entitled to be made whole before the insurer may recover any portion of the recovery from the tortfeasor. If the one responsible has paid the full extent of the loss, the insured should not claim both sums, and the insurer may then assert its claim to subrogation."

The Honorable Lower Court further ignored the language of this Court in Transamerica Insurance Company -vs- Barnes, 29 Ut.2d 101, 505 P.2d 783 (which case was cited to the Trial Judge in Plaintiff's Trial Memorandum) (R-16) in which this Court stated:

> "If the settlement were intended to include plaintiff's prior medical expenses, two drafts should have been issued, one to plaintiff and defendant jointly, and one to defendant alone. If the settlement were made with knowledge, actual or constructive, of plaintiff's subrogation right, such settlement and release is a fraud on the insurer, and will not affect the insurer's right of subrogation as against the tortfeasor or his insurance carrier."

In this case, the defendant, and his attorney, had actual notice, obviously, of Allstate's subrogation claim. Two drafts were issued. By accepting the sum of $10,000.00, $8,000.00 in addition to the $2,000.00 he had already received from Allstate, Defendant admits by said settlement, that he has been "made whole".

CONCLUSION

The Honorable Lower Court's decision and judgment has resulted in a double recovery for the defendant-respondent, and the plaintiff is entitled to a reversal of that judgment, with instructions to the Lower Court to enter judgment in favor of the plaintiff for the full amount of its subrogation interest, $2,000.00.

Respectfully submitted,

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Mailed 2 copies of the foregoing to N. GEORGE DAINES, At for Defendant-Respondent, 128 North Main, Logan, Utah 84321, 18th day of June 1979.

L. E. MIDGLEY